

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
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Implementation of the Local )  
Competition Provisions in the )  
Telecommunications Act of 1996 )

FEDERAL COMMUNICATIONS COMMISSION  
CC Docket No. 96-198  
OFFICE OF THE SECRETARY

To: The Commission

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COMMENTS OF PRONET INC.

Jerome K. Blask  
Daniel E. Smith

Gurman, Blask & Freedman, Chartered  
1400 Sixteenth Street, N.W.  
Suite 500  
Washington, D.C. 20036

(202) 328-8200

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COMMENTS OF PRONET INC.

ProNet Inc. ("ProNet"), through its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby submits its Comments with respect to the Notice of Proposed Rulemaking in the above-captioned proceeding ("NPRM").

I. INTRODUCTION

ProNet is a publicly-traded company with extensive experience in developing and operating wide-area paging networks. Although ProNet initially focused on providing service to hospitals and medical professionals using Special Emergency Radio Service ("SERS") as well as private carrier paging ("PCP") frequencies in the Business Radio and 929 MHz bands, the company now serves approximately 1,000,000 subscribers providing commercial mobile radio service ("CMRS") paging with common and private carrier frequencies.

ProNet will confine its comments to the following issues raised in the NPRM:

- o whether section 251(c) of the Act covers interconnection arrangements between incumbent LECS and providers of CMRS (discussed in II.B.2.e.2. of NPRM, ¶¶ 166-169);
- o number portability (II.C.2. of NPRM, ¶¶ 198-201); and

- o reciprocal compensation for transport and termination of traffic (II.C.5. of NPRM, ¶¶ 226-244).

ProNet will analyze these issues from the context of narrowband CMRS ("NCMRS") in general, and one-way paging service, in particular. ProNet's analysis will also reflect the perspective shaped by an aggressive acquisition program initiated in 1993, involving both common carrier paging ("CCP") and PCP systems. This program has catapulted ProNet into fifth place among the nation's paging carriers, operating in all CCP and PCP bands and serving approximately 1,000,000 subscribers throughout the country.

II. INTERCONNECTION WITH INCUMBENT LECs BY NARROWBAND CMRS OPERATORS -- II.B.2.e.2. of NPRM, ¶¶ 166-169

The NPRM first asks whether the additional obligation of incumbent LECs under section 251(c)(2) to provide interconnection with the LEC's network to "any requesting telecommunications carrier" extends to CMRS carriers. Regarding NCMRS in general and traditional digital and alphanumeric paging in particular, ProNet contends that this question must be answered in the affirmative. Under section 3(44), providers of these services are certainly "telecommunications carriers," which is defined by section 3(49) as any provider of "telecommunications services;" the latter phrase is defined in section 3(51) as:

the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used

Thus, whether NCMRS/one-way paging is within the ambit of section 251(c)(2) depends on the statutory meaning of "telecommunications," which section 3(48) defines as:

the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received

There can be no doubt that NCMRS and traditional one-way paging satisfies the conditions imposed by section 3(48). The NCMRS or paging user specifies the "points" between which information selected by the user is transmitted-- namely, the public switched telephone network and the user's receiver unit; the NCMRS/paging carrier transmits the information without changing its form or content.

Having determined that NCMRS/paging operators are indeed "telecommunications carriers," section 251(c)(2) then requires a determination that the interconnection they request is "for the transmission and routing of telephone exchange service and exchange access." The NPRM (at ¶168) asks, inter alia, which if any NCMRS/paging services fit the definition of "telephone exchange service" set forth in section 3(47) of the Act. The Commission, however, has already concluded that NCMRS/paging services are within the definitional tests of section 3(47).

In ruling on a petition filed by Telocator Network of America, the Commission held that:

Part 22 licensees are common carriers generally engaged in the provision of local exchange telecommunications in conjunction with local telephone companies and are therefore "co-carriers" with the telephone companies. They are entitled to reasonable interconnection for the services they provide.<sup>1/</sup>

This holding recognizes that NCMRS/paging providers collaborate with LECs to provide "local exchange telecommunications." Any interconnection requested by NCMRS/paging operators must, therefore, be for the purpose of transmitting and routing of exchange service (including exchange access), thus satisfying the test imposed by section 251(c)(2).<sup>2/</sup> In summary, interconnection for the purpose of NCMRS and/or digital and alphanumeric paging is indeed covered by section 251(c)(2).<sup>3/</sup>

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<sup>1/</sup> The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services (Memorandum Opinion and Order), 59 Rad. Reg. 2d 1275, 1278 (1986) (emphasis added). Considering the convergence of Part 22 and Part 90 paging services as required by statute and Commission rules, the cited reference to "Part 22 licensees" should not be viewed as limiting the precedential scope or effect of this 1986 holding.

<sup>2/</sup> Moreover, the Commission has specifically asked whether the public interest will be served if NCMRS/paging operators are accorded "the operational flexibility to offer fixed wireless local loop services as proposed for broadband CMRS." Amendment of the Commission's Rules To Permit Flexible Service Offerings in the Commercial Mobile Radio Service (Notice of Proposed Rulemaking), WT Docket No. 96-6, 11 FCC Rcd 2445, 2449 (1996). According to the Commission, these fixed NCMRS local loop services will "in some respects . . . be similar to wireline telephone local exchange service." Id.

<sup>3/</sup> As explained in more detail below, ProNet flatly rejects the notion that, because they collaborate with LECs to provide "local exchange telecommunications," NCMRS and paging operators are

III. NUMBER PORTABILITY -- II.C.2. of NPRM, ¶¶ 198-201

A. Number Portability Must Be Addressed in This Proceeding

In the NPRM (at ¶199), the Commission indicated that number portability issues raised by the Act will be addressed in its "Number Portability NPRM."<sup>4/</sup> The scope of the instant proceeding, however, differs in several important respects from the Number Portability NPRM; these differences have significant ramifications for NCMRS and paging operators alike.

1. The Scope and Purpose of Section 251  
Differ From The Number Portability NPRM

The Number Portability NPRM was initiated as a preliminary, broad-brush investigation of portability concepts, beginning with the admission that the Commission "lack[s] sufficient information on the costs (monetary and nonmonetary) of making telephone numbers portable . . . ." It encompasses all three types of number portability-- service provider, service and location-- and addresses several underlying objectives of number portability, including flexibility and mobility by end users, and increased competition.

By contrast, Section 251 of the Act is narrowly tailored to encourage and facilitate competition among local exchange carriers.

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themselves encompassed by the 1996 Act's definition of local exchange carrier. (See NPRM, ¶167.)

<sup>4/</sup> See Telephone Number Portability, CC Docket No. 95-116, 10 FCC Rcd. 12350 (1995); Public Notice, "Further Comments, Telephone Number Portability," DA 96-358, released March 14, 1996.

As such, it primarily focuses on service provider portability.<sup>5/</sup> Accordingly, the instant proceeding narrows the focus on number portability to local exchange competition, and adds a sense of expediency absent from the Number Portability NPRM.

In another critical area, however, the instant rulemaking supersedes the earlier proceeding by introducing a critical issue not specifically addressed in the Number Portability NPRM: whether CMRS providers, including paging operators, should be treated as LECs. Section 3(44) of the Act generally exempts CMRS carriers from classification as LECs, unless the Commission determines such classification to be required. Responding to Section 251 of the Act, ¶195 of the NPRM requests comments regarding which CMRS providers should be classified as LECs, what standards should be used to make such determinations, and whether such classifications should be made only for certain purposes.

The Commission's resolution of these issues will determine the applicability of Section 251(b) to NCMRS/paging providers, and will do so using substantially different bases for decision. Section 251 of the Act, and the NPRM effect a significant change in the context of number portability as previously defined by the Commission and addressed in the Number Portability NPRM.

2. The Concerns Of The NCMRS Industry  
Have Not Been Adequately Presented In The  
Number Portability NPRM

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<sup>5/</sup> Indeed, the definition of number portability in Section 3(46) of the Act is limited to service provider portability.



Because of the foregoing differences, the Number Portability NPRM elicited few comments from NCMRS/paging operators. Only three operators-- Paging Network, Inc., Airtouch Paging and Arch Communications Group-- and the Personal Communications Industry Association ("PCIA") submitted comments specifically focusing on NCMRS/paging. Moreover, as expressed below, these comments do not adequately address the concerns of NCMRS and one-way paging providers. Because the comment period in the Number Portability NPRM closed before the instant proceeding altered the Commission's focus on number portability,<sup>6/</sup> it is imperative that the Commission address these concerns here.

B. For NCMRS and Paging, Portability Should Be  
Accorded Only To Carriers, Not End Users

As discussed earlier, neither NCMRS nor traditional paging service fit the Act's definition of an LEC; accordingly, these service providers should be exempt from Section 251(b) requirements. Extending number portability to paging operators' customers will be ill-advised, and will fail to produce the public interest benefits anticipated by the Act. With respect to acquiring telephone numbers, NCMRS/paging operators are no different than any other LEC end user. Therefore, they should be entitled to the benefits of portability.

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<sup>6/</sup> Further Comments in the Number Portability NPRM were due March 29, 1996; replies were due April 5, 1996. See March 14, 1996 Public Notice.

1. NCMRS/Paging Operators Are Not LECs Under the Act

Section 3(44) of the Act defines an LEC as "any person that is engaged in the provision of telephone exchange service or exchange access." As discussed above, NCMRS/paging operators collaborate with LECs to provide local exchange telecommunications. Consequently, NCMRS and paging are viewed as ancillary and complimentary to traditional local exchange service.<sup>7/</sup> The notion that NCMRS/paging operators are "engaged" in providing local exchange telecommunications, however, is plainly incorrect and is incompatible with customer, regulator, and provider perceptions of what constitutes NCMRS and paging service. Moreover, nothing in the Act suggests that these providers should be treated as LECs for number portability purposes; indeed, the legislative history of the Act suggests the opposite conclusion.<sup>8/</sup>

2. Conferring Portability To NCMRS/Paging End Users Would Be Counterproductive And Unduly Burdensome

In addition to NCMRS's statutory exemption, imposing portability requirements on NCMRS/paging carriers will defeat the

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<sup>7/</sup> Even two-way narrowband services are obviously distinguishable from the local exchange service "engaged" in by LECs; two-way NCMRS is accurately characterized as "response paging," which is ancillary and complimentary to traditional LEC service.

<sup>8/</sup> Section 3(44) "ensure[s] that the Commission could, if future circumstances warrant, include CMRS providers which provide telephone exchange service or exchange access in the definition of 'local exchange carrier.'" Conference Report on S. 652, Congressional Record, January 31, 1996, at H1108. At the time the Act was enacted, Congress did not contemplate treating CMRS operators as LECs.

underlying purposes of Section 251 and the NPRM, and will impose undue hardships on a vigorous, competitive industry.

First, unlike local exchange service, which has long been characterized by monopoly, the paging industry has been hailed by the Commission as a "success story" due to its high level of competition and its efficient use of scarce spectral resources.<sup>9/</sup> Thus, there is no need to devise pro-competitive policies (e.g., portability) to spur competition in what would otherwise be an uncompetitive paging industry. In any event, promoting such competition is irrelevant to the Act's legislative purpose--instilling competition in the provision of local exchange service.

Second, NCMRS and one-way paging, are technically incompatible with the requirements proposed for number portability. To enable portability, every paging terminal in a carrier's system will require retrofitting to incorporate the necessary SS7 hardware. Consequently, providing portability to end users will be exceedingly costly and will delay delivery of service to subscribers.

Third, with respect to portability, a NCMRS/paging carrier's relationship to the LEC is that of end user; the NCMRS/paging

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<sup>9/</sup> Remarks of Michele C. Farquhar, Chief of the Wireless Telecommunications Bureau, before the Personal Communications Industry Association Spring Government Conference, May 15, 1996 (text published in FCC Daily Digest, May 16, 1996, page 1931). See also, Notice of Proposed Rule Making, WT Docket No. 96-18, released February 9, 1996, at ¶7 ("[i]ncreased competition, technological improvements, and declining subscription costs have helped to spur the dramatic growth in the paging industry").

carrier's subscriber has no such relationship with the LEC. That subscriber orders no numbers and directs no service inquiries or complaints to the LEC; nor is that subscriber in privity of contract with the LEC. (The subscriber by lifting his or her handset does complete the call). These characteristics, by contrast, attach uniquely to the NCMRS/paging carrier. (The paging carrier also completes a page). Because portability is an end user right, in the NCMRS/paging context, it belongs to the carrier not the carrier's end user.

Affording the benefits of number portability to NCMRS/paging providers as large business users of LEC services will have significant public benefits: it will further stimulate local exchange competition, reducing rates and interconnection costs. First, because of its large subscriber base and projected growth, NCMRS/paging is a tremendous source of LEC end user business. In 1994, total paging subscribership reached 27.3 million;<sup>10/</sup> by the year 2000, this figure is predicted to exceed 50 million.<sup>11/</sup> At present, ProNet holds approximately 3 million numbers for its paging operations throughout the country. Allowing companies to "port" large number blocs among competing LECs will greatly

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<sup>10/</sup> Telephony, Communications Daily (June 30, 1995).

<sup>11/</sup> MTel, Metrocall Draw Top Grades from Analyst Evaluating Six Paging Strategies, Land Mobile Radio News (April 7, 1995).

stimulate local exchange competition-- precisely the intent of Section 251 of the Act.<sup>12/</sup>

Second, compelling LECs to vie for NCMRS/paging business will drive interconnection prices towards actual costs. After employee salaries and site costs, interconnection is the largest expense for most NCMRS and paging companies. Because paging is a fiercely competitive, low margin/high volume business, reductions in interconnection costs are likely to be passed directly to paging subscribers.

IV. RECIPROCAL COMPENSATION FOR TRANSPORT AND  
TERMINATION OF TRAFFIC -- II.C.5. of NPRM, ¶¶ 226-244

The reciprocal compensation obligation imposed on local exchange carriers by section 251(b)(5) includes telecommunications traffic originated on a LEC network and terminated on a CMRS network, particularly an NCMRS or paging network. As established in CC Docket No. 95-185, all paging traffic originates on LEC networks and is terminated by the paging carrier. For this reason, bill-and-keep arrangements are inappropriate for determining LEC-NCMRS or LEC-paging reciprocal compensation. Moreover, because paging carrier incremental termination costs are clearly non-zero and there is no evidence that paging demand is inelastic, imposing

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<sup>12/</sup> In the Number Portability NPRM (at ¶22), the Commission rightly noted that "business customers [of LECs], in particular, may be particularly hesitant to incur the administrative, marketing, and goodwill costs of changing telephone numbers." This observation is even more true of CMRS providers, who rely on telephone numbers for their livelihood.

bill-and-keep is likely to result in serious resource misallocation, as the NPRM (at ¶242) plainly acknowledges.

At this juncture, it is important to acknowledge certain facts set forth in CC Docket No. 95-185 that relate to transport and termination of LEC traffic by paging carriers. There is substantial deviation in rate structures and levels for identical interconnection components provided by LECs to paging carriers. Flat rate charges for trunks used by paging carriers to interconnect with LEC networks vary by as much as 50% from LEC to LEC. In addition, certain LECs require the paging carrier to pay usage sensitive charges for LEC-originated traffic on the trunk. In contrast to these LECs, others have agreed to provide the transport link between their tandem switch and the paging carrier's switching terminal at no charge-- conceding that the transport link is already paid in rates charged to the originating end user.<sup>13/</sup>

These facts demonstrate that interconnection charges currently imposed on paging carriers: (a) have no rational basis; (b) are excessive and anticompetitive; (c) involve double-charging, to the extent a flat rate is imposed for the link between the LEC switch and the paging terminal; (d) involve triple-charging, where a flat rate and a usage sensitive charge are imposed; and (e) are utterly inconsistent with the "just and reasonable" requirement imposed by section 252(d)(2)(A). The Commission must, therefore, devise rules

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<sup>13/</sup> See Comments of PageNet in CC Docket No. 95-185, filed March 4, 1996 at 19-20.

that firmly establish that existing LEC interconnection charges violate the new Act and may not be sustained by state utility commissions. Alternatively, the Commission may simply pre-empt state regulation of LEC-NCMRS/paging interconnection by promulgating rules that create a uniform, nationwide approach to this type of interconnection that is consistent with principles espoused by the Act.

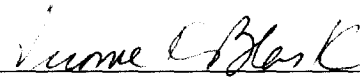
V. CONCLUSION

For the reasons discussed herein, ProNet respectfully requests that the Commission adopt rules concerning number portability and LEC-NCMRS/paging interconnection that are consistent with these comments.

Respectfully submitted,

PRONET INC.

By:

  
Jerome K. Blask  
Daniel E. Smith

Gurman, Blask & Freedman,  
Chartered  
1400 Sixteenth St., N.W.  
Suite 500  
Washington, D.C. 20036  
(202) 328-8200

Its Attorneys

May 17, 1996

CERTIFICATE OF SERVICE

I, Brendlyn V. Scott, a secretary in the law offices of Gurman, Blask and Freedman, Chartered, do hereby certify that I have on this 17th day of May, 1996, had copies of the foregoing "Comments of ProNet Inc." hand-delivered to the following:

Ms. Janice Myles  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

International Transcription Services, Inc.  
1919 M Street, N.W.  
Room 200  
Washington, D.C. 20554

  
Brendlyn V. Scott